IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

473

No. 473.

UNITED STATES OF AMERICA, *Petitioner,*

v.

REGINALD P. WITTEK.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR REGINALD P. WITTEK.

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QUESTION PRESENTED.

Did the Landlord and Tenant Branch of the Municipal Court for the District of Columbia have jurisdiction to maintain this action and grant judgment for possession of these housing accommodations?

SUMMARY OF ARGUMENT.

Congress, under the Constitution, has exclusive powers to legislate for the District of Columbia. When exercising such powers, the Congress possesses not only every appropriate national power, but in addition, all the powers of legislation which may be exercised by a state in dealing with its affairs so long as no other provisions of the Constitution are infringed. Exercising those powers, the Congress enacted the District of Columbia Emergency Rent Act for the express purpose of preventing an increase in the cost of living and thus impeding the National Defense Program by providing for rent control of all housing accommodations, privately or federally owned, in the District of Columbia.

A. Congress, under its Constitutional powers, exercises exclusive legislative control over the District of Columbia, establishes its courts and determines their jurisdiction.

B. Wittek, employed in the National Defense program, was required to live and work in the District of Columbia, and was one of the class of persons especially intended to be protected in their tenancy by the District of Columbia Emergency Rent Act.

C. The rent control features of the Emergency Price Control Act were never applicable to the District of Columbia.

ARGUMENT.

A. Congress, Under Its Constitutional Powers, Exercises Exclusive Legislative Control Over the District of Columbia, and Establishes Its Courts and Determines Their Jurisdiction.

Under the Constitution, the Congress has the exclusive power to legislate for the District of Columbia, and when exercising such powers, it possesses not only every appropriate national power, but, in addition, all the powers of

legislation which may be exercised by a state in dealing with its affairs so long as no other provisions of the Constitution are infringed.

Atlantic Cleaners & Dyers v. *U. S.*, 286 U. S. 427, 52 S. Ct. 607, 76 L. Ed. 1197 (1932)

Congress by the Organic Act of the District of Columbia of 1801 established two courts and thereafter by various Acts changed their names and jurisdictions as they exist today.

Since the Act of July 4, 1864, a jurisdictional provision has been in the Code of Laws for the District of Columbia providing that a tenancy from month to month, as here, may only be terminated on the part of the landlord by his giving the tenant 30 days' notice in writing to quit (R. p. 17, Pl's Exh. 3) and thereafter upon failure of the tenant to surrender possession, for summary proceedings by the landlord in the now Municipal Court for the District of Columbia. (R. pp. 1, 8.)

But as this Court said in *Willis* v. *Eastern T. & B. Co.*, 169 U. S. 295, 18 S. Ct. 347, 42 L. Ed. 752 (1897), those provisions were only applicable where the conventional relationship of landlord and tenant existed.

The District of Columbia Emergency Rent Act of December 2, 1941, placed a further jurisdictional limitation on the Municipal Court by providing that "no action or proceeding to recover possession of any housing accommodations shall be maintained by any landlord against any tenant * * * unless" certain grounds were alleged. (D. C. Code 1940, 45-1605 (b-1)) It is conceded here no such grounds were alleged. (Br. p. 10)

Prior to the Rent Act, the term "landlord" had not been defined by the Congress and therefore its common law definition had been accepted. *Willis* v. *Eastern T. & B. Co.*, supra.

The Rent Act, however, provided, "The term 'landlord' includes an owner, lessor, sublessor, or other person en-

titled to receive rent for the use or occupancy of any housing accommodations" and the term "person" "includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof." (D. C. Code 1940, 45-1611 (g) and (h))

The opinion of the Appellate Court was rendered September 27, 1948 and the present Congress, which is presumed to know the statutory interpretation therein placed upon the term "landlord," extended the Rent Control Act *in toto* until April 30, 1949 (H. R. 3910). It is further significant to note that while certain proposals were made by Committees of both Houses of Congress (H. R. 1757) to change certain provisions of the local Rent Act to make it conform to the National Rent Act of March , 1949, no express provision was proposed, either to or by those Committees, by the use of express language, to exclude the United States from the present definition of the term "landlord." Thus it would appear that the Congress has approved of the inclusion of the United States within the statutory definition of "landlord."

In brief, it is contended the principle of statutory construction that the United States is not included within the restrictions imposed by a general statute unless it is specifically named, citing cases, eliminates it from the District of Columbia Rent Act (Br. p. 20). It should be noted that the statutes referred to in the cited cases, were enacted by Congress under its national powers (income tax, bankruptcy, patent, criminal law, immigration, federal injunctions in labor disputes, and public lands) whereas the local Rent Act was enacted under its powers to legislate for the District of Columbia.

If the construction contended for be applicable to the local Rent Act, it is, however, as the Appellate Court pointed out (R. p. 48) subject to further rule of construction where, as here, the context and purposes of an Act of

Congress require, the statutory term "person" defined to include a "corporation", includes the United States.

Ohio v. *Helvering*, 292 U. S. 360, 54 S. Ct. 725, 78 L.Ed. 1307 (1934)
U. S. v. *Cooper Corp.*, 312 U. S. 600, 61 S.Ct. 742, 85 L.Ed. 1071 (1941)
Georgia v. *Evans*, 316 U. S. 159, 161, 62 S.Ct. 972, 86 L.Ed. 1346 (1942)

The purposes of the local Rent Act are fully spelled out by the Congress:

> "It is hereby found that the national emergency and the national defense program (1) have aggravated the congested situation with regard to housing accommodations existing at the seat of government; (2) have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations; (3) have rendered or will render ineffective the normal operations of a free market in housing accommodations; and (4) are making it increasingly difficult for persons whose duties or obligations require them to live or work in the District of Columbia to obtain such accommodations. *Whereupon it is the purpose of this chapter, and the policy of the Congress during the existing emergency to prevent undue rent increases and any other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living or otherwise impede the national-defense program.* (Italics ours.) (D. C. Code 1940—45-1601(a))

The Rent Act made no distinction between "landlords" and clearly says that it applies to "any landlord", with the avowed purpose of preventing practices which would "tend to increase cost of living or otherwise impede the National defense program."

The Government's contention that "the 'practices tending to increase the cost of living' which the Act was intended to prevent were unscrupulous profiteering and other speculative and manipulative practices by *private owners*

who operated for profit," and, therefore, the Congress did not intend that federal housing should be covered by the local Rent Act, because the government would not engage in undue rent increases and other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living or otherwise impede the national-defense program, may not be sustained. (Br. p. 21, Italics ours)

The purposes of the Rent Act are set out, supra, p. 5, and the Appellate Court disposed of the above contention by saying:

> "* * * Raising the rents of governmental housing is just as much an increase in the cost of living as raising the rents in any other housing project. This is a matter of public interest and not a matter of landlords' rights, sovereign or otherwise. * * *
>
> "* * * The United States makes this argument:
>
> "'A mere reading of the above (the statutory declaration of purposes) shows that Congress did not have the United States in mind in enacting the Emergency Rent Act, since it could not have had in contemplation that the United States was an owner who would engage in "profiteering and other speculative and manipulative practices." (R. p. 48)
>
> "Of course, Congress did not 'have in mind' any particular landlord. What interests us in the argument is that this landlord, attempting to raise its rents by 12½ per cent, says that the statute does not prevent it from doing so, since Congress could not have thought that it would attempt to do so. The potential ramifications of such a rule of statutory construction are fascinating to contemplate. And, obviously, the true premise to the Government's conclusion must be the opposite of that which it states in that argument, i.e., the premise must be that Congress must have had in mind that the Government would raise its rents and intended that it should be permitted to do so.
>
> "We are presented with the argument that since this housing project was itself a defense project, intended for defense workers, any restriction upon control of

its rents would impede the national defense program and thus violate one of the stated purposes of the Rent Act. The answer is, as we have already said, that the Rent Act does not purport to regulate the relationship of landlord and tenant, but merely fixes the rent ceiling, and in that fixation the protection of defense workers was a primary concern. * * * (R. p. 47)

"We cannot refrain from commenting upon the curious spectacle of one agency of the Government, the National Capital Housing Authority, asserting a right to violate a principle so insistently and emphatically proclaimed by the rest of the Government as essential to the public welfare. This Authority acts by and on behalf of its principal, the United States, and so must be treated as though it were in fact the whole of the executive branch of Government. But strong evidence would have to be presented to convince us that it was within the intent of Congress that while no other landlord could imperil the economic status of tenants in the District of Columbia, nevertheless the United States, in its capacity as landlord of defense housing, could raise its rents by the unimpeded administrative determination of this lessee Authority." (R. p. 48)

By instituting a summary proceeding as authorized by the D. C. Code, i.e., filing a complaint for possession of Real Estate (R. pp. 1, 8) the United States recognized, sought and submitted to the limited jurisdiction of the Landlord and Tenant Branch of the Municipal Court for the District of Columbia.

The Court's limited jurisdiction to entertain summary actions for possession of real estate by "landlords" is fixed by statutes which neither create nor distinguish between "landlords". No "landlord" coming into that Court can enlarge that limited jurisdiction beyond its statutory boundaries.

When it authorized defense housing, that is, housing that could not be supplied by private capital when needed, the Congress recognized the well-established principle that when the government enters the field of private business, it

abandons its sovereignty and is to be treated as any person or corporation. This is evidenced by its directive that suits for the recovery of possession of defense housing should be in state courts by the Federal Administrator in accordance with state laws. (U. S. C. A. Title 42-1544). The mere fact that an agency is an instrumentality of the government does not defeat the doctrine of separate entities, by providing the manner in which suits for the recovery of possession of such housing should be made.

Bank of U. S. v. *Planters Bank of Ga.*, 9 Wheat 904, 6 L.Ed. 244
South Carolina v. *U. S.*, 199 U. S. 437, 50 L.Ed. 261
U. S. v. *Strang*, 254 U. S. 491, 55 L.Ed. 368
Gill v. *Reese*, 134 N. E. (2) 273, 53 Ohio App. 134
Central Market v. *King*, 272 N. W. 244, cert. denied 302 U. S. 687
Bowles v. *Washington Co.*, 58 F. Supp. 709 (D. C. Pa. 1945)

The Congress, exercising its national power, as well as that of a state legislature, and presumed to be familiar with the rules of statutory construction, by the use of broad and comprehensive language, clearly intended to bring within the provisions of the District of Columbia Emergency Rent Act, all housing accommodations either privately or federally owned, and thus prevent an increase in the cost of living or otherwise impeding national defense.

It is respectfully submitted that the holding of the Appellate Court that the provisions of the Rent Act apply to the United States as a landlord so as to bar this action is correct. (R. p. 45.)

B. Wittek, Employed in the National Defense Program, Was Required to Live and Work in the District of Columbia, and Was One of the Class of Persons Especially Intended to Be Protected in Their Tenancy by the District of Columbia Emergency Rent Act.

Wittek personally, is not a figure of national stature. He is however, a patriotic citizen of the United States who left his home in Connecticut with his family at the instance of his government, in the summer of 1941 and came to the District of Columbia to aid in his humble way, the National Defense Program, by accepting employment as a machinist or mechanic at the Navy Yard, where he is employed today. As such employee, the Navy in September 1941 rented him a "defense housing unit" in Bellevue Housing Project, and thereinafter in 1943 permitted him to move into a larger unit in the same project. This last unit is the premises here in litigation. Defense Housing Projects were authorized by Congress to house Navy employees, such as Wittek. (USCA tit. 42-1501 et seq.)

Further clarification is necessary of the statements in Brief p. 10, footnote 3 which says:

> "There is nothing in the record to support a conclusion that this rent increase was in any respect arbitrary and unwarranted. 'Actually, the increase was necessitated by a change in the source of heating gas from the District of Columbia sewage disposal plant (which furnished the gas free) to the Washington Gas Light Company. See Annual Report of National Capital Housing Authority (1947) page 31."

In about September 1941, under the same act, the Navy completed construction of identical housing projects, Bellevue and Chinquipin Village, Alexandria, Virginia and promptly rented them to naval personnel. Bellevue was to be heated by sludge gas from the District of Columbia sewage disposal plant and Chinquipin was to be heated by commercial gas. For a unit in Bellevue, such as Wittek's present quarters the rental was $4.80 cheaper per month

than an identical unit in Chinquipin, and all other units were in the same proportion. Since the occupants of both projects were Navy employees, the tenants of Chinquipin protested the differential, and the tenants of Bellevue in September of 1941 consented to a raise in their rentals per unit to equal comparable rents at Chinquipin.

The rent of Wittek's unit having been adjusted upward in 1941, as though it were to be heated by commercial gas, may it now be argued in good conscience, that because the heating source was changed in 1945, such an increase "by administrative determination of the National Capital Housing Administration" was not arbitrary and unwarranted. Furthermore sufficient sludge gas has been available at all times to heat Bellevue, the report of National Capital Housing Administration referred to, to the contrary.

It well may be that the foregoing might be one of the most convincing arguments why proposed rent increases by National Capital Housing Administration should be submitted to the District of Columbia Rent Administration, where both sides might be heard, and impartial judgment rendered, instead of arbitrary "administrative determination", as is here contended for.

The purposes of the local Rent Act and the persons intended to be protected are set forth herein at p. 5 supra.

C. The Rent Control Features of the Emergency Price Control Act Were Never Applicable in the District of Columbia.

The District of Columbia Emergency Rent Act of December 2, 1941, effective 30 days thereafter, established as maximum rent ceilings, for housing accommodations rented on January 1, 1941 the rent as of that date or if not rented on that date but rented during that year, the last rent to which the landlord was entitled.

It was a model law. It provided in exact detail for maximum service standards, general adjustment of maximum rent ceilings, petitions for adjustments by either landlord or tenant and prohibitions.

It provided for an Administrator, his duties, proceeding before him and for judicial review of his orders. Last, but not least, it spelled out exact definitions.

The District of Columbia Rent Administrator's continued authority over rental housing during the entire period of the war and up to the present time, while all other "defense rental areas" in the United States were controlled by other federal agencies, notably OPA and the Housing Expediter, is as simple of explanation as it is an established fact.

The D. C. Emergency Rent Act already was in effect when OPA was assigned rent control by The Congress in 1942. OPA's authority over particular areas (including the District of Columbia) *was conditioned upon failure of that area government to establish appropriate control.* Because the local Rent Act was a model law, many of whose provisions were copied and embraced in OPA regulations, and because its administration was effective and its coverage was fully as extensive as OPA's within its limited area, *OPA neither acquired nor attempted to acquire jurisdiction through the processes set forth in* Section 2(b) of the E. P. C. Act. (Br., App. pp. 39-41.)

The District of Columbia Emergency Rent Act has been extended, from time to time, and the Congress has, so far, never seen fit to change or amend the essentials of original act. On the contrary, the National Rent Act has been amended and changed many times in its most essential features. This would indicate that Congress has always been satisfied with the results accomplished by the local act and dissatisfied with those of the National Act or that changes of conditions outside of the District of Columbia justified modifications not called for in the District of Columbia.

The debates in Congress on H. R. 1757, 81st Congress, an Act to amend and extend the provision of the District of Columbia Emergency Rent Act of 1941, clearly indicates that rent control for the District of Columbia had never been included within the National Rent Control Act.

On March 21, 1949, speaking on the above-mentioned legislation, Representative Harris said:

> "* * * Since we have come along during the war and after the war with a separate procedure and with separate administration it seemed to those who are most familiar with the situation that it would not be advisable at this time to start all over in the District of Columbia by bringing the District within the national law. That is the reason you have separate administration and a separate law under which this act is administered." (81st Cong., Cong. Rec., V. 95, No. 45, p. 2924)

Representatives McMillan and Bates, who participated in the drafting of the original District Rent Control Act, emphasized that throughout the years efforts have been made to make the District Rent Control a part of the national overall rent control program but the Congress has never seen fit so to do. (81st Cong., Cong. Rec., V. 95, No. 45, pp. 2924-2927).

During the debates in the Senate upon the above bill on March 29, 1949, the differences between the local and national rent acts were noted by the Senators. (81st Cong. Rec. V. 95, No. 51, pp. 3431-3452, 3454, 3455.)

Senator McGrath in great detail pointed out these differences and the operations of the local rent act and said in part:

> "* * * but at least it is our hope that we shall not have to deal with this problem (National and D. C. Rent Control) again in the Congress; and, since we have that hope, I should think Senators would be willing to go along with a tried and true rent-control bill such as has been in effect in the District for the past 7 years.
>
> Whatever reasons and excuses may be thought up now for making a uniform act, whatever their validity may have been in years gone by, I think there is no valid reason, now that we are reaching the end of the program, completely to disrupt the administration, to change the practices and the procedures and the understandings of the people of the District as to how rent

> control in the District operates. I think that would be a great mistake. I therefore, appeal to Members of the Senate to pass the bill now before us, with the amendments which will be proposed. * * * " (81st Cong., Cong. Rec., V. 95, No. 51, p. 3448.)

Those statements alone should completely refute argument that the Congress never intended federal housing in the District of Columbia to be within the provisions of the local rent act by pointing out the differences between the local and national rent acts, and the various changes of purposes in the later act. (Br. pp. 26-30)

Those differences only illustrate the fact that the Congress, exercising its national and local powers, may legislate in one manner for the District of Columbia, and under its national powers alone, legislate in a totally different manner upon the same subject outside of the District of Columbia.

CONCLUSION.

For the foregoing reasons, it is most respectfully submitted that the Judgment of the Court of Appeals be affirmed.

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April , 1949.